IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

FAO.No. 61 of 2007()

AS.186/2005 of DISTRICT COURT, KOTTAYAM
OS.12/2003 of MUNSIFF COURT, VAIKOM

.....

APPELLANTS/ADDITIONAL RESPONDENTS 5 TO 7 :

---

1. LALITHA RAVEENDRAN, W/O. LATE RAVEENDRAN NAIR, PALAMATTATHIL, PERUVA.

2. RAJESH P.R., S/O. LATE RAVEENDRAN NAIR,

3. RAJANI P.R., D/O. LATE RAVEENDRAN NAIR, PALAMATTATHIL, PERUVA.

BY ADV. SRI.DILIP MOHAN
SRI.K.KRISHNAKUMAR

RESPONDENTS/APPELLANT/RESPONDENTS 1 TO 3.

---

1. PAZHAYAMADOM FINANCE P.LTD., REPRESENTED BY ITS MANAGING DIRECTOR E.K. LUKE, S/O. KURIAKOSE, PAZHAYAMADATHIL, VALLAKOM, NADUVILE VILLAGE, VAIKOM.

2. JAIMON M.R., S/O. SEKHARAN NAIR, MUNDAKKAL HOUSE, AVARMA KARA, MULAKKULAM VILLAGE, VAIKOM TALUK.

3. SUKUMARAN NAIR M.S., S/O. SANKARA PILLAI, MUNDAKKAL HOUSE, AVARMA KARA, MULAKKULAM VILLAGE, VAIKOM TALUK.

4. K. SASIKUMAR, S/O. KUTTAPPA PANICKER, CHEMBAKASSERY HOUSE, KARIKKODU KARA, MULAKKULAM VILLAGE, VAIKOM TALUK

BY

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

F.A.O.NO. 61 OF 2007

DATED THIS THE 21st DAY OF FEBRUARY, 2007

JUDGMENT

Respondents 5 to 7, the legal heirs of fourth defendant in O.S.12/03 on the file of Munsiff Court, Vaikkom are challenging the order of remand passed by District Judge, Kottayam in A.S.186/05. That appeal was filed by first respondent plaintiff challenging the dismissal of the suit against defendants 3 and 4.

2. Learned Munsiff in O.S.12/03 granted a decree in favour of first respondent against defendants 1 and 2. Suit against fourth defendant was dismissed holding that he died even before the institution of the suit and legal heirs were not impleaded. Suit as against third defendant was dismissed holding that the liability as against third defendant was not proved.

3. Learned District Judge remanded the suit after impleading appellants herein at the instance of plaintiff/appellant. Learned District Judge found that the suit was proceeded against fourth defendant, who died before the institution of the suit. It was also found that the suit as against a dead person is a nullity and therefore appellant is entitled

to implead the legal heirs. Legal heirs of fourth defendant so impleaded, are challenging the order of remand.

4. Arguments of learned Counsel appearing for appellants was that the trial Court had granted sufficient opportunity to first respondent to implead legal heirs of fourth defendant and they were not impleaded and the suit, therefore, stood abated and learned District Judge should not have allowed the impleading application after setting aside the abatement and condoning the delay and thereafter remanded the suit and therefore the order is to be set aside.

5. On hearing learned Counsel appearing for appellants, I do not find any reason to interfere with the order of remand passed by learned District Judge. The suit as against fourth defendant was instituted after a lapse of more than three years from the date of his death. The suit as against a dead person is a nullity, as rightly found by learned District Judge. Therefore there is no question of abatement as against the appellants. Learned District Judge has only permitted plaintiff/appellant to implead the legal heirs of deceased fourth defendant. As the fourth defendant died prior to the institution of the suit , the procedure adopted by learned District Judge is perfectly legal and warrants no interference. Legal heirs

are entitled to raise all contentions before learned Munsiff including the maintainability of the suit as against them as barred by time.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

Acd